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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNIBEST INTERNATIONAL LLC,  
8 a Washington limited liability  
9 company,

10 Plaintiff,

11 v.

12 WINFIELD SOLUTIONS LLC,  
13 A Delaware limited liability  
14 company,

15 Defendant.

No. 4:16-CV-5031-EFS

**STIPULATED SUPPLEMENTAL  
PROTECTIVE ORDER RE UNIBEST  
DATABASE**

16 This Protective Order is entered pursuant to Federal Rule of  
17 Civil Procedure 26(c). The parties have stipulated and agreed, ECF  
18 No. 45-1, and the Court recognizes, that discovery in this matter is  
19 likely to involve production of confidential, proprietary, or private  
20 information, which should not be made available to competitors or the  
21 public generally.

22 Accordingly, **IT IS HEREBY ORDERED:**

- 23 **1. PURPOSES AND LIMITATIONS.** This order does not confer  
24 blanket protection on all disclosures or responses to  
25 discovery, the protection it affords from public disclosure  
26 and use extends only to the limited information or items  
that are entitled to confidential treatment under the

1 applicable legal principles, and it does not presumptively  
2 entitle parties to file confidential information under  
3 seal.

4 **2.** "CONFIDENTIAL" MATERIAL. "Confidential" material shall  
5 include the following documents and tangible things  
6 produced or otherwise exchanged: company's customer list,  
7 company's financial records contracts, confidential  
8 intercompany correspondence and confidential correspondence  
9 with clients regarding customer files, billing, design  
10 proposals and business development, software and trade  
11 secrets, and Unibest's soil analytics database ("Database")  
12 and documents relating to the Database ("Related  
13 Documents").

14 **3.** SCOPE. The protections conferred by this Order cover not  
15 only confidential material (as defined above), but also (1)  
16 any information copied or extracted from confidential  
17 material; (2) all copies, excerpts, summaries, or  
18 compilations of confidential material; and (3) any  
19 testimony, conversations, or presentations by parties or  
20 their counsel that might reveal confidential material.  
21 However, the protections conferred by this Order do not  
22 cover information that is in the public domain or becomes  
23 part of the public domain through trial or otherwise.

24 **4.** ACCESS TO AND USE OF CONFIDENTIAL MATERIAL.

25 **A.** Basic Principles. A receiving party may use  
26 confidential material that is disclosed or produced

1 by another party or by a non-party in connection with  
2 this case only for prosecuting, defending, or  
3 attempting to settle this litigation. Confidential  
4 material may be disclosed only to the categories of  
5 persons and under the conditions described in this  
6 Order. Confidential material must be stored and  
7 maintained by a receiving party at a location and in  
8 a secure manner that ensures that access is limited  
9 to the persons authorized under this Order.

10 **B.** Disclosure of "CONFIDENTIAL" Information or Items.  
11 Unless otherwise ordered by the court or permitted in  
12 writing by the designating party, a receiving party  
13 may disclose any confidential material only to:

14 i. the receiving party's counsel of record in this  
15 action, as well as employees of counsel to whom it  
16 is reasonably necessary to disclose the information  
17 for this litigation;

18 ii. the officers, directors, and employees (including  
19 in house counsel) of the receiving party to whom  
20 disclosure is reasonably necessary for this  
21 litigation, unless the parties agree that a  
22 particular document or material produced is for  
23 Attorney's Eyes Only and is so designated;

24 iii. experts and consultants to whom disclosure is  
25 reasonably necessary for this litigation and who  
26

1                   have signed the "Acknowledgment and Agreement to Be  
2                   Bound" (Exhibit A);

3           iv. the court, court personnel, and court reporters and  
4           their staff;

5           v. copy or imaging services retained by counsel to  
6           assist in the duplication of confidential material,  
7           provided that counsel for the party retaining the  
8           copy or imaging service instructs the service not  
9           to disclose any confidential material to third  
10          parties and to immediately return all originals and  
11          copies of any confidential material;

12          vi. during their depositions, witnesses in the action  
13          to whom disclosure is reasonably necessary and who  
14          have signed the "Acknowledgment and Agreement to Be  
15          Bound" (Exhibit A), unless otherwise agreed by the  
16          designating party or ordered by the court. Pages  
17          of transcribed deposition testimony or exhibits to  
18          depositions that reveal confidential material must  
19          be separately bound by the court reporter and may  
20          not be disclosed to anyone except as permitted  
21          under this Order;

22          vii. the author or recipient of a document containing  
23          the information or a custodian or other person who  
24          otherwise possessed or knew the information.

25          **C. Filing Confidential Material.** Before filing  
26          confidential material or discussing or referencing

1           such material in court filings, the filing party  
2           shall confer with the designating party to determine  
3           whether the designating party will remove the  
4           confidential designation, whether the document can be  
5           redacted, or whether a motion to seal or stipulation  
6           and proposed order is warranted.

7           **5.     DESIGNATING PROTECTED MATERIAL.**

8           **A.**     Exercise of Restraint and Care in Designating  
9           Material for Protection. Each party or non-party that  
10          designates information or items for protection under  
11          this Order must take care to limit any such  
12          designation to specific material that qualifies under  
13          the appropriate standards. The designating party must  
14          designate for protection only those parts of  
15          material, documents, items, or oral or written  
16          communications that qualify, so that other portions  
17          of the material, documents, items, or communications  
18          for which protection is not warranted are not swept  
19          unjustifiably within the ambit of this Order. Mass,  
20          indiscriminate, or routinized designations are  
21          prohibited. Designations that are shown to be clearly  
22          unjustified or that have been made for an improper  
23          purpose (e.g., to unnecessarily encumber or delay the  
24          case development process or to impose unnecessary  
25          expenses and burdens on other parties) expose the  
26          designating party to sanctions. If it comes to a

1           designating party's attention that information or  
2           items that it designated for protection do not  
3           qualify for protection, the designating party must  
4           promptly notify all other parties that it is  
5           withdrawing the mistaken designation.

6           **B.**   Manner and Timing of Designations. Except as  
7           otherwise provided in this Order (see, e.g., second  
8           paragraph of section 5.2(a) below), or as otherwise  
9           stipulated or ordered, disclosure or discovery  
10          material that qualifies for protection under this  
11          Order must be clearly so designated before or when  
12          the material is disclosed or produced.

13          i. Information in documentary form: (e.g., paper or  
14             electronic documents and deposition exhibits, but  
15             excluding transcripts of depositions or other  
16             pretrial or trial proceedings), the designating  
17             party must affix the word "CONFIDENTIAL" to each  
18             page that contains confidential material. If only a  
19             portion or portions of the material on a page  
20             qualifies for protection, the producing party also  
21             must clearly identify the protected portion(s)  
22             (e.g., by making appropriate markings in the  
23             margins).

24          ii. Testimony given in deposition or in other pretrial  
25             or trial proceedings: the parties must identify on  
26             the record, during the deposition, hearing, or

1 other proceeding, all protected testimony, without  
2 prejudice to their right to so designate other  
3 testimony after reviewing the transcript. Any  
4 party or non-party may, within 15 days after  
5 receiving a deposition transcript, designate  
6 portions of the transcript, or exhibits thereto, as  
7 confidential.

8 iii. Other tangible items: the producing party must  
9 affix in a prominent place on the exterior of the  
10 container or containers in which the information or  
11 item is stored the word "CONFIDENTIAL." If only a  
12 portion or portions of the information or item  
13 warrant protection, the producing party, to the  
14 extent practicable, shall identify the protected  
15 portion(s).

16 **C.** Inadvertent Failures to Designate. If timely  
17 corrected, an inadvertent failure to designate  
18 qualified information or items does not, standing  
19 alone, waive the designating party's right to secure  
20 protection under this Order for such material. Upon  
21 timely correction of a designation, the receiving  
22 party must make reasonable efforts to ensure that the  
23 material is treated in accordance with the provisions  
24 of this Order.

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1           **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

2           **A.**     Timing of Challenges. Any party or non-party may  
3                   challenge a designation of confidentiality at any  
4                   time. Unless a prompt challenge to a designating  
5                   party's confidentiality designation is necessary to  
6                   avoid foreseeable, substantial unfairness,  
7                   unnecessary economic burdens, or a significant  
8                   disruption or delay of the litigation, a party does  
9                   not waive its right to challenge a confidentiality  
10                  designation by electing not to mount a challenge  
11                  promptly after the original designation is disclosed.

12          **B.**     Meet and Confer. The parties must make every attempt  
13                  to resolve any dispute regarding confidential  
14                  designations without court involvement. Any motion  
15                  regarding confidential designations or for a  
16                  protective order must include a certification, in the  
17                  motion or in a declaration or affidavit, that the  
18                  movant has engaged in a good faith meet and confer  
19                  conference with other affected parties in an effort  
20                  to resolve the dispute without court action. The  
21                  certification must list the date, manner, and  
22                  participants to the conference. A good faith effort  
23                  to confer requires a face-to-face meeting or a  
24                  telephone conference.

25          **C.**     Judicial Intervention. If the parties cannot resolve  
26                  a challenge without court intervention, the

1           designating party may file and serve a motion to  
2           retain confidentiality. The burden of persuasion in  
3           any such motion shall be on the designating party.  
4           Frivolous challenges, and those made for an improper  
5           purpose (e.g., to harass or impose unnecessary  
6           expenses and burdens on other parties) may expose the  
7           challenging party to sanctions. All parties shall  
8           continue to maintain the material in question as  
9           confidential until the court rules on the challenge.

10       **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
11       LITIGATION. If a party is served with a subpoena or a court  
12       order issued in other litigation that compels disclosure of  
13       any information or items designated in this action as  
14       "CONFIDENTIAL," that party must:

- 15       **A.** promptly notify the designating party in writing and  
16       include a copy of the subpoena or court order;
- 17       **B.** promptly notify in writing the party who caused the  
18       subpoena or order to issue in the other litigation  
19       that some or all of the material covered by the  
20       subpoena or order is subject to this Order. Such  
21       notification shall include a copy of this Order; and
- 22       **C.** cooperate with respect to all reasonable procedures  
23       sought to be pursued by the designating party whose  
24       confidential material may be affected.

25       **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.** If a  
26       receiving party learns that, by inadvertence or otherwise,

1 it has disclosed confidential material to any person or in  
2 any circumstance not authorized under this Order, the  
3 receiving party must immediately:

4 **A.** notify in writing the designating party of the  
5 unauthorized disclosures,

6 **B.** use its best efforts to retrieve all unauthorized  
7 copies of the protected material,

8 **C.** inform the person or persons to whom unauthorized  
9 disclosures were made of all the terms of this Order,  
10 and

11 **D.** request that such person or persons execute the  
12 "Acknowledgment and Agreement to Be Bound" that is  
13 attached hereto as Exhibit A.

14 **9.** INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
15 MATERIAL. When a producing party gives notice to receiving  
16 parties that certain inadvertently produced material is  
17 subject to a claim of privilege or other protection, the  
18 obligations of the receiving parties are those set forth in  
19 Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
20 is not intended to modify whatever procedure may be  
21 established in an e-discovery order or agreement that  
22 provides for production without prior privilege review.  
23 Parties shall confer on an appropriate non-waiver order  
24 under Fed. R. Evid. 502.

25 **10.** NON TERMINATION AND RETURN OF DOCUMENTS. Within 60 days  
26 after the termination of this action, including all

1 appeals, each receiving party must return all confidential  
2 material to the producing party, including all copies,  
3 extracts and summaries thereof. Alternatively, the parties  
4 may agree upon appropriate methods of destruction.  
5 Notwithstanding this provision, counsel are entitled to  
6 retain one archival copy of all documents filed with the  
7 court, trial, deposition, and hearing transcripts,  
8 correspondence, deposition and trial exhibits, expert  
9 reports, attorney work product, and consultant and expert  
10 work product, even if such materials contain confidential  
11 material. The confidentiality obligations imposed by this  
12 Order shall remain in effect until a designating party  
13 agrees otherwise in writing or a court orders otherwise.

14 **11. SPECIFIC TERMS REGARDING DATABASE AND RELATED DOCUMENTS.**

15 Notwithstanding the foregoing, the following provisions  
16 shall apply to the Database and Related Documents:

17 **A.** Only Winfield's designated representatives Dr. Robert  
18 Beck, Mr. Robert Brown, and counsel of record for  
19 Winfield, including Winfield's in-house counsel  
20 Jonathan C. Miesen (collectively, "Winfield's  
21 Representatives") may access and view the Database at  
22 Unibest's premises, at a mutually agreeable time and  
23 date.

24 **B.** Prior to inspection of the Database, Winfield's  
25 Representatives shall execute a non-disclosure  
26 agreement in the form attached as Exhibit A,

1 providing that any information contained in, obtained  
2 from, or relating to the Database shall be kept  
3 strictly confidential and shall not be disclosed to  
4 anyone other than Winfield's Representatives and  
5 counsel of record for Winfield, and shall be used for  
6 purposes of this litigation only and for no other  
7 purpose.

8 **C.** Only Winfield's designated representatives Mr. Tyler  
9 Grenzow, Dr. Robert Beck, and Ms. Stephanie Wedryk  
10 and counsel of record for Winfield (including in-  
11 house counsel, Jonathan C. Miesen) (collectively, the  
12 "Control Group") may review the Related Documents,  
13 which shall be produced to Winfield upon entry of  
14 this order and subject to the provisions below.

15 **D.** Prior to review of the Related Documents, the Control  
16 Group shall execute a non-disclosure agreement in the  
17 form attached as Exhibit A, providing that any  
18 information contained in, obtained from, or relating  
19 to the Related Documents shall be kept strictly  
20 confidential and shall not be disclosed to anyone  
21 other than the Control Group and counsel of record  
22 for Winfield (including Winfield's in-house counsel,  
23 Jonathan C. Miesen), and shall be used for purposes  
24 of this litigation only and for no other purpose.

25 **E.** Paragraph 4.C of this Order is supplemented to state  
26 that Winfield will provide Unibest at least three

1 business days' advance notice of its intent to file  
2 any pleading or materials containing or attaching  
3 information contained in, obtained from, or relating  
4 to the Database or Related Documents, and shall not  
5 file any such pleadings or exhibits except for under  
6 seal.

7 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
8 Order and provide copies to all counsel.

9 **DATED** this 4<sup>th</sup> day of October 2017.

10 \_\_\_\_\_s/Edward F. Shea\_\_\_\_\_  
11 EDWARD F. SHEA  
12 Senior United States District Judge  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty  
5 of perjury that I have read in its entirety and understand the  
6 Stipulated Protective Order that was issued by the United States  
7 District Court for the Eastern District of Washington on October 3,  
8 2017, in the case of *Unibest International LLC v. Winfield Solutions*  
9 *LLC*, No. 4:16-CV-5031-EFS. I agree to comply with and to be bound by  
10 all the terms of this Stipulated Protective Order, and I understand  
11 and acknowledge that failure to so comply could expose me to sanctions  
12 and punishment in the nature of contempt. I solemnly promise that I  
13 will not disclose in any manner any information or item that is  
14 subject to this Stipulated Protective Order to any person or entity  
15 except in strict compliance with the provisions of this Order. I  
16 further agree to submit to the jurisdiction of the United States  
17 District Court for the Eastern District of Washington for the purpose  
18 of enforcing the terms of this Stipulated Protective Order, even if  
19 such enforcement proceedings occur after termination of this action.

20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22 Printed name: \_\_\_\_\_

23 Signature: \_\_\_\_\_